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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,269	05/14/2001	Paul Wynn	1536	6607

7590 08/22/2003
Striker Striker & Stenby
103 East Neck Road
Huntington, NY 11743

EXAMINER

BALSIS, SHAY L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 08/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/806,269

Applicant(s)

WYNEN ET AL.

Examiner

Shay L Balsis

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☒ Claim(s) 5-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, both the projections and end covers must be shown on the protective profile as stated in claim 5, otherwise the feature(s) must be canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The abstract of the disclosure is objected to because it should be in single paragraph form. Correction is required. See MPEP § 608.01(b).

Claim Objections

4. Claims 5-13 are objected to under 37 CFR 1.75(c) as being in improper form because a dependent claim must depend from all the limitations of the independent claim. Since claim 5 only depends from the preamble of the independent claim it is considered to be improper. Accordingly, correction is required.

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The disclosure is objected to because of the following informalities: Reference to the claims from the written description appears improper. The written description should not look to the claims to define the invention. For example, see page 1, line 3.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 states the limitation "according to the preamble to claim 1", however, it is unclear as to what the preamble of claim 1 is. If the Applicant only wants claim 5 to depend from the preamble of claim 1, then Applicants needs to change the preamble of claim 5. Claim 5, if dependent from claim 1 must include all the limitations of claim 1, not just the preamble. Correction is necessary.

Claim 11 recites the limitation "the outwardly inclined bevel" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Feigenbaum (USPN 5732436).

Feigenbaum teaches wiper blade comprising a wiper strip (16), which is held by a support bracket system (26). The wiper strip is encompassed by a protective profile (10), characterized in that the protective profile is closed in the longitudinal direction on both ends by a cover (56), which can be used to open and close the protective profile. The end covers rest against the wiper strip since the protective profile has an open profile at the ends. The cover has two closing surfaces, each run along a side surface (22) of the profile. The cover has an axis of symmetry lateral to the longitudinal direction. Also, the end wall closing the profile is considered to be a projection extending from a lateral side.

8. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Stoller (USPN 3021548).

Stoller teaches wiper blade comprising a wiper strip (12), which is held by a support bracket system (12). The wiper strip is encompassed by a protective profile (17), characterized in that the protective profile is closed in the longitudinal direction on both ends by a cover (30), which can be used to open and close the protective profile. The end covers rest against the wiper strip since the protective profile has an open profile at the ends. The cover has two closing surfaces, each run along a side surface (figure 6) of the profile. Additionally the cover has an axis of symmetry lateral to the longitudinal direction.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claim 5 (based on the preamble of claim 1) is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 18 (renumbered 1) of copending Application No. 09/806099. Although the conflicting claims are not identical, they are not patentably distinct from each other because the case 09/806099 anticipates claim 5.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claim 5 (including all the limitations of claim 1) is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 18 (renumbered 1) of copending Application No. 09/806099 in view of Feigenbaum (USPN 5732436). It would have been obvious to combine Application No. 09/806099 with end covers as taught by Feigenbaum to prevent dirt from entering the protective profile and causing unnecessary damage to the wiper strip while secured in the protective profile.

This is a provisional obviousness-type double patenting rejection.

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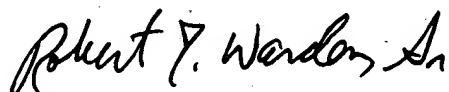
Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L Balsis whose telephone number is 703-305-7275. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.

slb
August 14, 2003



ROBERT J. WARDEN, SR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700